

EXHIBIT B



Not Reported in F.Supp.2d
 Not Reported in F.Supp.2d, 2000 WL 33223384 (C.D.Cal.)
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C Lynx Ventures LP v. Canadian Imperial Bank of
 Commerce
 C.D.Cal.,2000.

Only the Westlaw citation is currently available.

United States District Court, C.D. California.
 LYNX VENTURES LP

v.

CANADIAN IMPERIAL BANK OF COMMERCE.
No. CV 99-07160RSWLMANX.

April 18, 2000.

LEW, District Judge.

*1 Before the Court is Defendant's motion to
 dismiss pursuant to Federal Rule of Civil Procedure
12(b)(6) and for forum non conveniens.^{FN1}

FN1. The motion is brought on behalf of all
 Defendants.

The motion was filed on September 9, 1999. At
 that time, the presiding district judge was Judge
 William D. Keller. After noticing the hearing for
 October 25, 1999, Judge Keller removed the hearing
 from calendar and took the matter under submission.
 On October 29, 1999, Plaintiff filed an ex parte
 application for leave to file a surreply to respond to
 the arguments set forth in Defendants' reply
 memorandum. On November 1, 1999, Defendants
 filed an opposition to the ex parte application and a
 response to the surreply.

On November 2, 1999, the case was transferred
 to this Court and on December 21, 1999, the case was
 transferred from this Court to create the calendar for
 District Judge Virginia A. Phillips. However, by
 order of Chief Judge Terry J. Hatter, the matter was
 returned to this Court on February 29, 2000. The
 Court now GRANTS Plaintiff's ex parte application
 for leave to file a surreply. Because the parties are
 familiar with the case, the Court need not recite the
 facts and allegations.

After considering all of the papers filed with the
 Court, the Court hereby DENIES the motion to
 dismiss in its entirety.

1. Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6)

Motions to dismiss under Rule 12(b)(6) should
 test the sufficiency of the complaint, rather than
 address the merits of the case. The Court must
 presume all factual allegations of the complaint to be
 true and draw all reasonable inferences in favor of the
 non-moving party. Klarfeld v. United States, 944
F.2d 583, 585 (9th Cir.1991). The allegations of a
 complaint should not be dismissed for failure to state
 a claim "unless it appears beyond doubt that the
 plaintiff can prove no set of facts in support of his
 claim which would entitle him to relief." Conley v.
Gibson, 355 U.S. 41, 45-46 (1957).

Complaints alleging securities fraud must meet
 the heightened pleading standards of Federal Rule of
Civil Procedure 9(b). Rule 9(b) requires particularized
 allegations of the circumstances constituting
 fraud. Fed.R.Civ.P. 9(b). To allege fraud with
 particularity, the "plaintiff must set forth what is false
 or misleading about a statement, and why it is
 false." In re GlenFed, Inc. Securities Litigation, 42
F.3d 1541, 1548 (9th Cir.1994). "Of primary
 importance in understanding the particularity
 requirement of Rule 9(b) is the recognition that it
 does not render the general principles set forth in
 Rule 8 entirely inapplicable to pleadings alleging
 fraud; rather, the two rules must be read in
 conjunction with each other." 5 Charles A. Wright &
Arthur R. Miller, Federal Practice and Procedure §
1298 (2d ed.1990).

Defendants argue that Plaintiff has failed to
 plead loss causation with the particularity required by
Rule 9(b). While Plaintiff must prove that the
 misrepresentations or omissions caused the financial
 loss, allegations of loss causation need not be pled
 with particularity. As stated above, Rule 9(b) is
 satisfied if the allegations set forth what is false or
 misleading and why it is false. Plaintiff has clearly
 done so.

*2 Under the Private Securities Litigation
 Reform Act ("PSLRA"), the pleading standard in
 securities fraud cases has been made more rigorous,
 beyond mere 9(b) requirements. Marksman Partners,

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L.P. v. Chantal Pharmaceutical, 927 F.Supp. 1297, 1308 (C.D.Cal.1996). The PSLRA requires that a complaint alleging securities fraud “specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information an belief, the complaint shall state with particularity all facts on which that belief is formed.” 15 U.S.C. § 78u-4(b)(1). Like Rule 9(b), PSLRA does not apply heightened pleading standards to the element of loss causation.

Accordingly, the Court finds that Plaintiff's claims for fraud, conspiracy to defraud, and violation of Rule 10b-5 of the Securities Exchange Act are adequately pled; thus Defendants' motion to dismiss for failure to state a claim is DENIED.

2. Motion to Dismiss on Grounds of Forum Non Conveniens

Defendants also move for dismissal under the doctrine of forum non conveniens on the ground that the Ontario Superior Court is the appropriate forum to litigate this dispute.

“A party moving in the trial court to dismiss on the grounds of forum non conveniens has the burden of showing that there is an adequate alternative forum, and that choice of law and the balance of private and public interest factors favor dismissal.” Alpha Therapeutic Corp. v. Nippon Hoso Kyokai, 199 F.3d 1078, 1090 (9th Cir.1999) (citing Ceramic Corp. of America v. Inka Maritime Corp. Inc., 1 F.3d 947, 949 (9th Cir.1993). “Unless the balance is strongly in favor of the defendant, plaintiff's choice of forum should rarely be disturbed.” Gates Learjet Corp. v. Jensen, 743 F.2d 1325, 1335-6 (9th Cir.1984) (citations omitted).

The parties do not dispute that Canada provides an adequate alternative forum for Plaintiff's claims. However, Defendants do not establish that Canada has a stronger interest in adjudicating Plaintiff's claim, and therefore do not show that foreign law should apply. Moreover, the private interest factor does not weigh in favor of dismissal because party and nonparty witnesses, as well as documentary evidence, are likely to be located in both countries. As for the public interest factor, there exists “a strong local and national interest in enforcing the securities

laws of this country in order to maintain the integrity of the markets.” In re Livent, Inc. Securities Litigation, 78 F.Supp.2d 194, 211 (S.D.N.Y.1999) (citations omitted). In sum, Defendants have not made a showing sufficient to overcome the great deference due Plaintiff.

Accordingly, Defendants' motion to dismiss on the ground of forum non conveniens is DENIED.

IT IS SO ORDERED.

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